IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2018-WC-00385-COA

ROBERT SHEFFIELD **APPELLANT**

v.

S.J. LOUIS CONSTRUCTION INC. AND ZURICH AMERICAN INSURANCE COMPANY **APPELLEES**

DATE OF JUDGMENT:	02/28/2018
TRIBUNAL FROM WHICH APPEALED:	MISSISSIPPI WORKERS' COMPENSATION COMMISSION
ATTORNEYS FOR APPELLANT:	JAMES KENNETH WETZEL GARNER JAMES WETZEL
ATTORNEY FOR APPELLEES:	WILLIAM BIENVILLE SKIPPER
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
DISPOSITION:	REVERSED AND REMANDED: 03/26/2019
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

TINDELL, J., FOR THE COURT:

¶1. During the course and scope of his employment with S.J. Louis Construction Inc. (S.J. Louis), Robert Sheffield suffered a June 1, 2015 injury to his lower back. On September 2, 2015, Sheffield filed a petition to controvert against S.J. Louis and its insurance carrier, Zurich American Insurance Company (Zurich) (collectively, the Appellees). Following a hearing, the administrative judge (AJ) entered an opinion awarding Sheffield permanent-disability benefits for a 60% loss of wage-earning capacity. The Appellees appealed the AJ's findings to the full Workers' Compensation Commission (Commission).

¶2. The Commission concluded that Sheffield's action of knowingly providing inaccurate

information on his employment application with S.J. Louis posed no bar to his claim. In addition, the Commission found apportionment failed to apply to Sheffield's claim. Finally, the Commission concluded that Sheffield experienced no additional loss of wage-earning capacity attributable to his current injury. The Commission therefore reversed the AJ's determination as to that issue. Aggrieved, Sheffield appeals.

¶3. No dispute exists that Sheffield sustained a work-related compensable injury while employed by S.J. Louis. The parties dispute, however, whether Sheffield established that he recovered from prior work-related injuries and then experienced a new injury in 2015 that resulted in an additional loss of wage-earning capacity. Like the AJ, we find Sheffield presented substantial evidence to support his claim as to this issue. In reaching its decision, the Commission appeared to overlook the totality of the evidence presented and to rely only on select evidence that dismissed the possibility of an additional loss of wage-earning capacity simply because Sheffield's new injury returned him to his prior baseline abilities and an even lower impairment rating. However, the fact Sheffield's impairment rating from his 2015 back injury was lower than his prior impairment rating did not automatically foreclose the possibility that he suffered an additional loss of wage-earning capacity, and Sheffield provided substantial evidence to support this position.

¶4. Because substantial evidence supported the AJ's finding that Sheffield suffered an additional loss of wage-earning capacity, and because the Commission appeared not to consider the totality of the evidence before it in reversing the AJ's decision as to this issue, we find the Commission's reversal to be arbitrary and capricious. *See Pulliam v. Miss. State*

Hudspeth Reg'l Ctr., 147 So. 3d 864, 868 (¶16) (Miss. Ct. App. 2014) (discussing the standard of review applicable to workers' compensation cases). We therefore reverse the Commission's judgment as to Sheffield's loss of wage-earning capacity so that on remand the Commission may consider all the evidence fully and determine whether, despite the now lower impairment rating, Sheffield's new injury resulted in any additional loss of wage-earning capacity.

FACTS

¶5. At the time of Sheffield's June 1, 2015 injury, he had worked seven months for S.J. Louis as a truck driver. Prior to his 2015 back injury, Sheffield suffered two other work-related injuries. In 1990, during his employment with Dibs Chemical Company, Sheffield fell while moving a dolly loaded with fifty-pound bags of sand. Due to the fall, Sheffield injured his lower back and ultimately required a lumbar fusion. About a year and a half after his back surgery, Sheffield's doctor released him to return to work. Sheffield testified that he fully recovered from the 1990 back injury and related surgery.

¶6. In 2010, while employed by Warren Paving, Sheffield injured his neck during a work-related automobile accident. Sheffield underwent surgery to fuse the C6 and C7 vertebrae in his neck. On October 24, 2011, Sheffield's treating physician, Dr. Eric Wolfson, placed Sheffield at maximum medical improvement (MMI) and released Sheffield to return to work with light-duty restrictions. Dr. Wolfson assigned Sheffield an 8% impairment rating to the body as a whole.

¶7. Sheffield petitioned the Commission for approval to settle the claim arising from his

2010 neck injury. The Commission granted Sheffield approval to receive $95,000 from Warren Paving and its insurance carrier and $50,000 from the third-party tortfeasor involved in the accident. In his sworn petition for approval of the third-party settlement, Sheffield acknowledged that Dr. Wolfson had limited him to light-duty work after the 2010 accident and that the settlement included compensation for any loss of wage-earning capacity he experienced due to the 2010 neck injury.

¶8. After Dr. Wolfson released him to return to work following his 2010 neck injury, Sheffield again sought employment as a commercial truck driver. In October 2014, S.J. Louis hired Sheffield. On his employment application, Sheffield purposely failed to disclose his prior injuries and surgeries and his light-duty work restriction. He also falsely stated on the application that he had finished high school. At the hearing before the AJ, Sheffield admitted that he falsified his application answers because the truth would have disqualified him from the truck-driving position. He further testified, however, that he believed he was capable of performing the job since it required no lifting or bending. Sheffield's duties for S.J. Louis included, but were not limited to, ensuring his truck was not overloaded, being on-site as needed, flagging traffic, and hauling loads. To obtain his commercial driver's license, Sheffield had to pass a physical examination, which he testified required him to lift at least seventy pounds, demonstrate good eyesight and hearing, and be in overall good health. During the seven months prior to his June 1, 2015 injury, Sheffield performed his work duties without any reported incidents. He received $15 an hour for the first forty hours a week that he worked. Sheffield testified that he then received time and a half for any hours

he worked after forty hours a week and that he typically worked sixty to seventy hours a week.

¶9. On June 1, 2015, Sheffield lost his balance when he attempted to look into the back of his dump truck. Although Sheffield grabbed a handle on the side of his truck to steady himself, he still missed the step beneath him. Sheffield experienced immediate lower-back pain, which he reported to his supervisor, Max Hardin. Hardin then reported the injury to his supervisor, Telley Lopez, who took Sheffield to see Dr. Rickey Chance. Dr. Chance ordered X-rays of Sheffield's back and prescribed Sheffield pain medicine and muscle relaxers. Sheffield participated in physical therapy but had to stop due to increased pain. He followed up with Dr. Chance, who recommended an MRI and referred Sheffield to Dr. Wolfson.

¶10. On August 13, 2015, Sheffield saw Dr. Wolfson, who then referred him to Dr. Samir Tomajian, a pain-management specialist. After treatment methods provided minimal or temporary pain relief, Sheffield underwent a functional-capacity evaluation (FCE). The physical therapist who performed the FCE recommended that Sheffield perform only light-duty work and limit standing and sitting for prolonged time periods. On October 27, 2015, Dr. Eric Amundson performed an employer medical evaluation (EME) on Sheffield. Dr. Amundson found Sheffield could return to work in a moderate-duty capacity, but he recommended that Sheffield lift no more than forty pounds.

¶11. In February 2016, Dr. Wolfson found that Sheffield had reached MMI for his 2015 back injury. Sheffield testified Dr. Wolfson stated he could do nothing else and did not recommend surgery for Sheffield. Dr. Wolfson assigned Sheffield a 7% impairment rating

to the body as a whole and stated Sheffield was capable of performing light-duty work. After Dr. Wolfson released Sheffield to return to work, Sheffield began completing job applications in May 2016. Sheffield applied for at least 130 jobs and even contacted Hardin, his former supervisor at S.J. Louis. S.J. Louis informed Sheffield, however, that it had no job openings.

¶12. On August 26, 2016, Dr. Rahul Vohra conducted an independent medical evaluation (IME) on Sheffield. Dr. Vohra concurred with Dr. Wolfson's finding that Sheffield had reached MMI on February 19, 2016. Dr. Vohra noted Sheffield's 7% whole-person impairment rating for the 2015 back injury as well as his preexisting whole-person impairment rating for his lumbar spine. Dr. Vohra concluded that "in light of no structural change or neurologic involvement" no additional impairment resulted from Sheffield's 2015 back injury.

¶13. In response to Sheffield's petition to controvert, the Appellees admitted that Sheffield experienced a work-related injury. However, they denied that he suffered any permanent injury or loss of wage-earning capacity due to the 2015 back injury. Following a hearing, the AJ determined that Sheffield's inaccurate employment application posed no bar to his present workers' compensation claim. The AJ further found that Sheffield provided credible testimony and corroborating evidence of a full recovery from both his 1990 back injury and his 2010 neck injury. The AJ also found apportionment of benefits did not apply because the Appellees failed to establish that Sheffield's prior injuries resulted in any permanent impairment to his back. Based on the evidence, the AJ found Sheffield had suffered a 60%

loss of wage-earning capacity from his 2015 back injury and was entitled to $359.26 a week in permanent-partial disability benefits for 450 weeks.

¶14. On appeal, the Commission affirmed the AJ's findings that apportionment was inapplicable to Sheffield's claim and that Sheffield's inaccurate employment application failed to bar his claim. However, the Commission reversed the AJ's finding that Sheffield suffered a loss of wage-earning capacity due to his 2015 back injury. In reversing the AJ's finding, the Commission relied on evidence from two sources: (1) the Appellees' vocational-rehabilitation expert Ty Pennington and (2) Dr. Vohra. Both Pennington and Dr. Vohra provided evidence that Sheffield's work at S.J. Louis exceeded Dr. Wolfson's work restrictions after the 2010 neck injury and that, as a result, the 2015 back injury returned Sheffield to his baseline capabilities following his 2010 neck injury rather than created additional loss of wage-earning capacity.

¶15. Pennington never personally met with or spoke to Sheffield, but he prepared a vocational report for the litigation and testified at the hearing before the AJ. Despite Dr. Wolfson's light-duty work restrictions following Sheffield's 2010 neck injury, Pennington stated that a truck-driving position like the one Sheffield held at S.J. Louis is considered medium-level work. Pennington therefore testified that Sheffield's job at the time of his 2015 back injury fell outside Dr. Wolfson's work restrictions. Although Pennington acknowledged that Sheffield might have difficulty finding work within the restrictions given to him, he testified that if Sheffield could return "to the light work level, as described by Dr. Wolfson in 2011[,] and [to] the light to light-medium work level, as described by Dr. Vohra,

[Sheffield would] have return[-]to[-]work options." Further, when directly asked whether, in his expert opinion, Sheffield's "7 percent body[-]as[-]a[-]whole rating and light-duty restrictions from 2016" caused any greater loss of access to the labor market than the "8 percent body[-]as[-]a[-]whole impairment and light-duty restriction in 2011[,]" Pennington answered that the new impairment created no significant loss of access to the labor market for Sheffield. Based on such findings, Pennington ultimately concluded that Sheffield's 2015 back injury resulted in no decrease in wage-earning capacity or significant loss of access to the labor market.

¶16. The Commission found that the conclusion reached by Dr. Vohra, who performed the IME on Sheffield, supported Pennington's vocational proof. In forming his opinion, Dr. Vohra reviewed Sheffield's medical records and conducted a one-time physical examination of Sheffield. Dr. Vohra noted Sheffield's preexisting impairment "to the whole person for his lumbar spine . . . ." As previously discussed, Dr. Wolfson had assigned Sheffield an 8% whole-body impairment rating after the 2010 neck injury and found Sheffield was capable of performing light-duty work. After the 2015 back injury, Dr. Wolfson again restricted Sheffield to light-duty work but assigned him a lower whole-body impairment rating of 7%. According to Dr. Vohra, "in light of no structural change or neurologic involvement, there is no additional impairment . . . [resulting from Sheffield's 2015] on-the-job injury." The Commission therefore concluded Dr. Vohra's evidence corroborated Pennington's testimony of no loss of wage-earning capacity.

¶17. Aggrieved by the Commission's finding that he suffered no loss of wage-earning

capacity, Sheffield appeals.

STANDARD OF REVIEW

¶18. We review workers' compensation cases to determine "whether the Commission's decision was supported by substantial evidence, was arbitrary and capricious, was beyond the scope or power of the agency to make, or violated [a party's] constitutional or statutory rights." *Pulliam v. Miss. State Hudspeth Reg'l Ctr.*, 147 So. 3d 864, 868 (¶16) (Miss. Ct. App. 2014). The Commission constitutes "the trier and finder of facts." *Leflore Cty. Bd. of Supervisors v. Golden*, 169 So. 3d 882, 885 (¶8) (Miss. Ct. App. 2014). Where substantial evidence supports the Commission's decision, we remain "bound by that determination even though the evidence would convince us otherwise, were we the factfinder." *Id.* We review questions of law de novo. *Id.*

DISCUSSION

¶19. Neither party disputes that Sheffield sustained an accidental work-related injury. The parties instead disagree as to whether Sheffield proved his 2015 back injury caused a permanent disability and loss of wage-earning capacity for which he has not already been compensated. A "decision on loss of wage[-]earning capacity is largely factual and is to be left largely to the discretion and estimate of the Commission." *Bryan Foods Inc. v. White*, 913 So. 2d 1003, 1010 (¶28) (Miss. Ct. App. 2005). In making such determinations:

> The Commission considers the employee's actual wages earned prior to the injury as compared to the employee's capacity to earn those same wages after the injury, as well as other factors such as the employee's age, education, training and work experience, and his or her ability to return to the same or other employment.

Airtran Inc. v. Byrd, 953 So. 2d 296, 301 (¶11) (Miss. Ct. App. 2007).

¶20. At the time of his 2015 back injury, Sheffield was sixty-six years old. Although he indicated on his employment application that he had completed high school, he later admitted this was untrue. He did, however, possess a commercial driver's license and had over thirty years of experience as an over-the-road truck driver and ten years of experience as a local driver. Pennington, the Appellees' vocational-rehabilitation expert, acknowledged that, after the 2015 back injury, Sheffield would have difficulty remaining a commercial-licensed driver and earning wages similar to those he received as a truck driver. Prior to the accident, Sheffield earned $15 an hour, but after the accident, Pennington stated that, based on Sheffield's light-duty restrictions, his residual-earning capacity ranged substantially lower at $7.25 to $10.50 an hour.

¶21. After Dr. Wolfson released him in February 2016 to return to work, Sheffield began applying for jobs. Sheffield stated that he did not disclose his work restrictions on the job applications because he knew no one would hire him. Instead, Sheffield testified that he hoped to meet potential employers in person and show them his full capabilities. Despite producing evidence of a diligent job search, Sheffield stated that he had been unable to obtain work. He presented evidence to show that he applied for at least 130 jobs either online or in person. Sheffield further testified that he contacted his former supervisor in June 2016 but was told that S.J. Louis had no openings.

¶22. The record reflects Sheffield presented substantial credible evidence to support his testimony that he fully recovered from both his 1990 back injury and his 2010 neck injury.

Not only do Sheffield's medical records corroborate his testimony, but both Dr. Amundson's EME and Dr. Vohra's IME document Sheffield's reports to physicians that he had been pain free in his neck and back prior to his 2015 injury. Following his lumbar fusion in 1990, Sheffield reported that he returned to work about two years later without any restrictions and that he experienced no further lower-back problems until his 2015 injury. Likewise, following the surgery to fuse the C6 and C7 vertebrae in his neck after his 2010 injury, Sheffield reported to Dr. Wolfson at a postoperative appointment that he had "fe[lt] great since surgery." Although Sheffield experienced some residual neck pain at a severity of "4/10," Dr. Wolfson observed that, "[p]ostoperatively, the patient is doing extremely well with resolution of preoperative pain symptoms."

¶23. Sheffield's work history further supports his testimony that he fully recovered from his prior injuries. The evidence indicates that Sheffield worked as a truck driver for S.J. Louis for about seven months without any apparent incidents. It was not until his 2015 back injury that Sheffield began to complain of pain.

¶24. After reviewing the record as a whole, we find nothing to support the Appellees' apparent contention that Sheffield's prior 8% whole-body impairment rating alone constitutes conclusive proof that he was still permanently disabled at the time of his 2015 back injury and not entitled to additional compensation benefits. Substantial credible evidence instead supports Sheffield's claim that he recovered from his prior injuries and that his 2015 back injury constituted a new injury that, along with his age, experience, and education, limits his access to the labor market. According to Sheffield's testimony and evidence, his ability to

earn the same or similar wages and to return to the same employment actually diminished after he suffered his 2015 back injury.

¶25. The AJ's finding that Sheffield experienced an additional loss of wage-earning capacity was supported by substantial credible evidence. In reversing the AJ's decision, the Commission apparently failed to weigh and take into account such evidence. Instead, the Commission relied solely on evidence stating that Sheffield's current work restrictions and level of work duty returned him to his prior baseline abilities and that, therefore, Sheffield suffered no additional permanent disability or loss of wage-earning capacity. We find, however, that the fact Sheffield's current impairment rating was lower than his prior impairment rating fails to automatically foreclose the possibility of an additional loss of wage-earning capacity. Because we find the Commission arbitrarily and capriciously reversed the AJ's finding as to loss of wage-earning capacity, we reverse the Commission's judgment as to this issue and remand this case for further proceedings consistent with this opinion.

CONCLUSION

¶26. Substantial evidence supported the AJ's finding that Sheffield's 2015 injury resulted in an additional loss of wage-earning capacity. In reversing the AJ's decision as to this issue, the Commission apparently failed to take into account such evidence and to properly weigh all the evidence before it. We therefore reverse the Commission's decision as to Sheffield's loss of wage-earning capacity as arbitrary and capricious, and we remand this case so the Commission may fully consider whether, despite the now lower impairment rating,

Sheffield's new injury resulted in an additional loss of wage-earning capacity.

¶27. **REVERSED AND REMANDED.**

GREENLEE, WESTBROOKS, McDONALD, LAWRENCE AND McCARTY, JJ., CONCUR. J. WILSON, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY BARNES, C.J., CARLTON, P.J., AND C. WILSON, J.

J. WILSON, P.J., DISSENTING:

¶28. The majority opinion never disputes that there is substantial evidence to support the Commission's decision. Rather, the majority reverses based on some vague and unsupported suspicion that the Commission did not *really* consider "the totality of the evidence." *Ante* at ¶¶3-4. The majority sends the case back not because of any articulable error in the Commission's decision, but only for the Commission to give it a little more thought and reflection. There is no basis for the majority to send this case back without any actual determination of error in the decision under review. There is substantial evidence to support the Commission's finding that Sheffield experienced no additional impairment or loss of wage-earning capacity as a result of his 2015 injury. Applying the proper standard of review, the Commission's decision must be affirmed. Therefore, I respectfully dissent.

I. Facts and Procedural History

¶29. Sheffield injured his lower back while working in 1990. He underwent a lumbar sacral fusion surgery and returned to work one to two years later. In May 2010, Sheffield injured his neck and back in an auto wreck in the course and scope of his employment with Warren Paving. In June 2011, Sheffield underwent a cervical discectomy and fusion at C6-7 (neck surgery). In October 2011, Sheffield's treating physician, Dr. Wolfson, determined

that Sheffield had reached maximum medical improvement (MMI) with an eight percent body-as-a-whole impairment rating. Dr. Wolfson restricted Sheffield to "light duty" work. In March 2012, Sheffield settled his workers' compensation claim against Warren Paving for a lump sum of $95,000.[1] He also settled his claim against a third-party driver for $50,000, less $7,120.34 paid to the employer/carrier in settlement of their statutory lien.

¶30. Sheffield testified that he went back to work driving a truck in 2012, and in October 2014 S.J. Louis hired him as a dump truck driver. Sheffield's job at S.J. Louis was outside of the work restrictions placed on him as a result of his prior injury. In response to specific questions on his job application, Sheffield falsely stated that he had no prior injuries or work restrictions. Sheffield testified that he did so because he "would have never got the job" if he had "told the truth"—i.e., S.J. Louis would not have hired him as a truck driver if it had known of his physical restrictions. However, Sheffield also testified that he was physically able to do his job at S.J. Louis. According to Sheffield, he was capable of "driving the truck" and his other job duties, although he could not do any "lifting" or "bending."

¶31. In June 2015, Sheffield injured his back in the course and scope of his employment with S.J. Louis. As the majority opinion explains, Sheffield underwent treatment for the injury and reached MMI in February 2016. Post-MMI, Dr. Wolfson determined that Sheffield had a seven percent body-as-a-whole impairment rating. Dr. Wolfson also restricted Sheffield to "light duty" work—just as he had following Sheffield's prior injury.

¶32. In June 2016, despite his restriction to light duty work, Sheffield called his former

[1] The employer/carrier had previously paid Sheffield $24,027.84 in compensation payments and $48,606.49 in medical benefits.

supervisor at S.J. Louis and asked if he could return to his prior job as a truck driver. The supervisor told Sheffield that there were no jobs open.

¶33. Dr. Rahul Vohra performed an independent medical examination (IME) on Sheffield. Dr. Vohra concluded that Sheffield's 2015 injury had not resulted in any structural change to Sheffield's spine and that Sheffield had not suffered any "additional impairment." Dr. Vohra noted that Sheffield claimed that he had "no residual difficulty or restrictions" from his 1990 back injury and surgery; however, Dr. Vohra stated that, "[g]iven his history and imaging, that would be unusual." Dr. Vohra also stated that, in his opinion, Sheffield remained "capable of driving a commercial vehicle."

¶34. Dr. Eric Amundson performed an employer's medical examination (EME). Dr. Amundson also concluded that it was "not probable" that Sheffield suffered any permanent spinal injury as a result of his June 2015 fall. Dr. Amundson believed that Sheffield suffered only a "lumbar strain." Dr. Amundson emphasized that the "mechanism of the injury" was "relatively innocuous" in that Sheffield "did not fall to the ground" and "landed on his feet." Dr. Amundson also found it "surprising" that Sheffield claimed to have "been completely pain free with respect to low back pain for the last 22 years."

¶35. The Commission found persuasive Dr. Vohra's conclusion that Sheffield's June 2015 injury had not resulted in any additional impairment. The Commission further concluded that Sheffield had not experienced any additional loss of wage-earning capacity and, therefore, denied his claim for permanent disability benefits.

II. Analysis

¶36. Our standard of review in workers' compensation cases is limited. "Our task is not to second guess the factual conclusions of the Commission . . . ." *Levy v. Miss. Uniforms*, 909 So. 2d 1260, 1265 (¶16) (Miss. Ct. App. 2005). "This Court's review is limited to determining whether the Commission's decision was supported by substantial evidence, was arbitrary and capricious, was beyond the scope or power of the agency to make, or violated . . . constitutional or statutory rights. . . . [T]he Commission is the ultimate fact-finder and judge of the credibility of witnesses; therefore, we may not reweigh the evidence that was before the Commission." *Pulliam v. Miss. State Hudspeth Reg'l Ctr.*, 147 So. 3d 864, 868 (¶16) (Miss. Ct. App. 2014) (citations and quotation marks omitted). "We defer to the Commission's decision and reverse only when the Commission's decision is not supported by substantial evidence." *Cook v. Home Depot*, 81 So. 3d 1126, 1128 (¶7) (Miss. Ct. App. 2011), *aff'd*, 81 So. 3d 1041 (Miss. 2012). "This remains true even though we might have reached a different conclusion were we the trier of fact." *Parker v. Ashley Furniture Indus.*, 164 So. 3d 1081, 1084 (¶11) (Miss. Ct. App. 2015) (quoting *Smith v. Johnston Tombigbee Furniture Mfg. Co.*, 43 So. 3d 1159, 1164 (¶15) (Miss. Ct. App. 2010)).

¶37. The Commission's decision in this case must be affirmed because it is supported by substantial evidence. Dr. Amundson's report and Dr. Vohra's report both support the Commission's factual finding that Sheffield did not experience any new physical impairment as a result of his June 2015 injury. Both doctors were skeptical of Sheffield's claim that he had been pain free prior to June 2015. And both doctors concluded that Sheffield's current impairments are the result of his prior injuries. Their conclusions are supported by the fact

that Sheffield's impairment rating and work restrictions at MMI in this case remained essentially unchanged from MMI following his prior injury. Sheffield presented no medical evidence or opinion to contradict the conclusions of Dr. Amundson or Dr. Vohra.

¶38. Moreover, Dr. Wolfson's evaluations also contradict any claim that Sheffield was "fully recovered" (*ante* at ¶22) from his prior back and neck injuries. In 2011, Dr. Wolfson restricted Sheffield to light duty work and assessed an eight percent impairment rating *after Sheffield had reached maximum medical improvement following his 2010 injury*. MMI is the point in time at which "the employee reaches the maximum benefit from medical treatment, or differently expressed," it is when the "employee is cured or is as far restored as the permanent character of his injuries will permit." *Triangle Distrib. v. Russell*, 268 So. 2d 911, 912 (Miss. 1972). "After that point, any lingering disability is considered permanent." *Flowers v. Crown Cork & Seal USA Inc.*, 167 So. 3d 188, 191 (¶12) (Miss. 2014) (citing *McGowan v. Orleans Furniture Inc.*, 586 So.2d 163, 168 (Miss. 1991)). Sheffield's restriction to light duty work *after he reached MMI* in 2011 and Dr. Wolfson's assessment of a *permanent* impairment rating are both inconsistent with the majority's claim that Sheffield must have "fully recovered" following his 2011 injury.

¶39. The majority seems to suggest that Sheffield must have experienced a loss of wage-earning capacity because he could work as a truck driver before his 2015 injury but can no longer work at that job post-injury. The problem with that argument is that such employment was *already* outside of the restrictions that were placed on Sheffield when he reached MMI following his prior injury, and Sheffield admitted that he would not have been hired as a

truck driver had he disclosed his restrictions to prospective employers. Sheffield was working as a truck driver in June 2015 only because he chose to disregard and conceal the restrictions already placed on him by Dr. Wolfson. Sheffield testified that he did so because he was still physically capable of "driving the truck"—even if he could not do any "lifting," and even if such work was outside his medical restrictions.

¶40. Based on the evidence presented, the Commission could have concluded that the situation is exactly the same after Sheffield's 2015 injury. Despite his restrictions, Sheffield asked to return to his prior job at S.J. Louis. This permits an inference that Sheffield believes that he is still physically capable of doing that job—just as before his June 2015 injury. In addition, Dr. Vohra specifically concluded that Sheffield remained physically "capable of driving a commercial vehicle."

¶41. The majority ultimately says that it is reversing and remanding "so the Commission may fully consider *whether* . . . Sheffield's new injury resulted in an additional loss of wage-earning capacity." *Ante* at ¶26 (emphasis added). This makes no sense because the Commission has already done exactly that: the Commission found no loss of wage-earning capacity. The majority is unwilling to say that the Commission's finding is erroneous. Indeed, nowhere does the majority opinion dispute that there is substantial evidence to support the Commission's decision.[2] Instead, the majority remands the case based on some

[2] The majority does express agreement with "the AJ" and "find" that "Sheffield presented substantial evidence to support his claim." *Ante* at ¶3. In this one sentence, the majority misstates the issue on appeal in three different ways. First, we are an appellate court. We do not "find" facts. Second, although the majority opinion repeatedly cites and relies on the AJ's findings, we review the Commission's findings—*not the AJ's*. For purposes of our review, the AJ's findings are irrelevant unless the Commission adopts them.

vague suspicion that the Commission did not *really* consider "the totality of the evidence." *Ante* at ¶¶3-4. The majority sends the case back to the Commission without identifying any specific error in the Commission's original decision. This is highly inconsistent with our standard of review in workers' compensation cases.

¶42. "[I]f there is a quantum of credible evidence which supports the decision of the Commission, no court will reverse the decision." *Metal Trims Indus. Inc. v. Stovall*, 562 So. 2d 1293, 1297 (Miss. 1990). There is no requirement that the Commission specifically list all of the evidence that it has considered, or specifically say which evidence it considers credible or not credible. "This Court will not determine where the preponderance of the evidence lies when the evidence is conflicting, the assumption being that the Commission, as the trier of fact, has previously determined which evidence is credible, has weight, and which is not." *Id.*; *cf. Brewer v. Brewer*, 919 So. 2d 135, 141 (¶23) (Miss. Ct. App. 2005) ("As an appellate court, we often admonish ourselves that we do not need to re-examine all of the evidence to see if it agrees with the chancellor's ruling; rather, our duty is merely to

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See Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243, 1245 (Miss. 1991). Third and most important, "the test" on appeal "is whether or not the decision of the [C]ommission is supported by substantial evidence, and . . . if so the decision of the [C]ommission should be upheld." *United Funeral Homes Inc. v. Culliver*, 240 Miss. 878, 882, 128 So. 2d 579, 580 (1961). This is true even if a different result would "also be supported by substantial evidence." *Id.* In workers' compensation cases, there can be "substantial evidence" both in support of the claim and in opposition to it. *Ga.-Pac. Corp. v. Veal*, 484 So. 2d 1025, 1027-28 (Miss. 1986). In such cases, the Commission will be "justified in either finding." *Id.* "The Commission is in the same position as a jury, which might have brought in a verdict for either the plaintiff or the defendant, and where the jury has enough evidence to justify its findings the court affirms the case." *Id.* at 1027. Thus, the majority's statement that "substantial credible evidence" supports Sheffield's claim is beside the point. The only issue for this Court is whether there is substantial evidence to support *the Commission's decision*.

see if the chancellor's ruling is supported by substantial evidence.").

¶43. In this case, the Commission stated that it had "thoroughly studied the record in this cause," and its order discusses much of the relevant evidence. "Therefore, we cannot assume the Commission did not review the evidence . . . ." *Mabus v. Mueller Indus. Inc.*, 205 So. 3d 677, 687 (¶51) (Miss. Ct. App. 2016). Yet the majority assumes exactly the opposite via a series of carefully worded assertions that the Commission "appeared to overlook," "appeared not to consider," and "apparently failed to weigh and take into account" some of the evidence. *Ante* at ¶¶3-4, 25-26. Other than the majority's obvious disagreement with the Commission's decision, there is no basis for all of these appeareds and apparentlys. Nor is there any basis for the majority's vague suspicion that the Commission did not consider all of the evidence.

¶44. Furthermore, if substantial evidence supports the Commission's decision, we are bound to affirm—even if we think that the Commission could have more "plainly set forth findings of fact supporting its decision." *Necaise v. Magnolia Pers. Care*, 768 So. 2d 307, 311 (¶16) (Miss. Ct. App. 1999). We cannot reverse the Commission just because we think that it could have written a better or more thorough opinion. If the Commission's decision is supported by substantial evidence, we must affirm. *See Fought v. Stuart C. Irby Co.*, 523 So. 2d 314, 317 (Miss. 1988) ("If the Commission's findings of fact and order are supported by substantial evidence, all appellate courts are bound thereby."); *Day-Brite Lighting Div., Emerson Elec. Co. v. Cummings*, 419 So. 2d 211, 213 (Miss. 1982) (The Supreme Court has "made it clear that as long as the [C]ommission's decisions were based upon substantial

evidence, that decision would be upheld upon appeal in spite of the fact that the administrative judge's decision was also supported by substantial evidence.").

¶45. There was evidence before the Commission that permitted a finding that Sheffield experienced no additional impairment from his 2015 injury. Therefore, the Commission's finding that Sheffield experienced no additional loss of wage-earning capacity is neither arbitrary nor clearly erroneous. The majority apparently interprets the evidence differently than the Commission did. However, we are not permitted to reinterpret conflicting evidence in a case such as this. "As is the case with any trier of fact, the Commission not only judges credibility and weighs evidence, it is also entrusted to interpret evidence that is capable of more than one reasonable interpretation." *Ford v. Magnolia Franchise Holdings LLC*, 112 So. 3d 467, 470 (¶7) (Miss. Ct. App. 2013) (quotation marks omitted). The Commission's decision reflects a reasonable interpretation of the conflicting evidence and, therefore, must be affirmed. I respectfully dissent.

BARNES, C.J., CARLTON, P.J., AND C. WILSON, J., JOIN THIS OPINION.